

### **REMARKS**

The Office Action mailed October 30, 2003 has been received and the Examiner's comments carefully reviewed. Claims 8, 9, 31, and 41 have been amended. Claim 45 has been added. No new subject matter has been added. Claims 30 and 40 have been cancelled. Claims 1-3, 8-12, 19-23, 29, 31-39, and 41-45 are currently pending. Applicant respectfully submits that the pending claims are in condition for allowance.

### **Rejections Under 35 U.S.C. §112**

The Examiner rejected claims 42-44 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particular point out and distinctly claim the subject matter which the applicant regards as the invention. Claim 42 depends upon claim 9. Claim 9 has been amended such that that antecedent basis for "the base material" is now properly provided for claim 42. Applicants respectfully request withdrawal of this rejection in light of the amendment to claim 9.

### **Rejections Under 35 U.S.C. §102**

#### **I. Yan (U.S. Patent 5,843,172)**

The Examiner rejected claims 8-9, 11-12, 19-22, 29, 31-34 and 36-44 under 35 U.S.C. §102(e) as being anticipated by Yan (U.S. Patent 5,843,172). Applicants respectfully traverse this rejection, but have amended claims 8, 9, 31, and 41, and cancelled claim 40 to advance this application to allowance. Applicants reserve the right to pursue the original subject matter via a continuing application.

Yan discloses a porous medicated stent 12 having pores 18 that are loaded with a therapeutic agent. Column 3, lines 55-58. The stent 12 is made by a sintering process where particles are bonded together without entirely melting the particles, and pressed or molded into the desired shape. Column 4, lines 2-5. Spaces or gaps 26 remain between the particles 24 despite the fact that the particles are in contact with adjacent particles. Col. 4,

lines 15-17. The gaps 26 form the pores 18 when the particles 24 are sintered. Column 4, lines 23-24.

A. Claims 8, 9, 11-12, 19-22, 38, 39 and 41-44

Independent claims 8 and 9 each recite a stent having a stent body. The stent body includes an interior surface having a rough surface finish, wherein the rough surface finish includes portions removed from a base material of the stent body.

Yan does not disclose a stent having a rough surface finish including portions removed from a base material. Rather, Yan discloses a stent 12 including sintered particles 24 bonded together, or sintered particles 24 bonded to metal sheet 82. In either embodiment, pores 18 or gaps 26 of the stent 12 are formed between adjacent particles. The pores 18 are formed by the arrangement of particles 24; the pores 18 are not formed by removing portions of a base material.

At least because Yan does not disclose a stent having a rough surface finish including portions removed from a base material, Applicants respectfully submit that independent claim 8, independent claim 9, and dependent claims 11, 12, 19-22, 38, 39, and 41-44 are patentable.

B. Claims 29, 31-34, 36, and 37

Independent claim 29 recites an intraluminal stent having a stent body. The stent body an interior surface having a rough surface finish rougher than a surface finish of an exterior surface.

Yan does not disclose a stent including an interior surface having a rough surface finish rougher than a surface finish of an exterior surface. At least for this reason, Applicants respectfully submit that independent claim 29, and dependent claims 31-34, 36, and 37 are patentable.

II. Brown et al. (U.S. Patent 6,071,305)

The Examiner also rejected claims 1-3, 8-12, 19, 21-23, 29-30 and 33-44 under 35 U.S.C. §102(e) as being anticipated by Brown et al. (U.S. Patent 6,071,305). Applicants respectfully traverse this rejection, but have amended claims 8, 9, and 41, and

cancelled claims 30 and 40 to advance this application to allowance. Applicants reserve the right to pursue the original subject matter via a continuing application.

A. Claims 1-3, 29, and 33-36

Independent claims 1 and 29 each recite a stent having a stent body. The stent body includes an exterior surface and an interior surface. The interior surface has at least a portion having a rough surface finish rougher than a surface finish of the exterior surface.

Brown discloses drug delivery stent having an opening 22 that leads to an inner cavity 20 for carrying a drug or agent 23. The Examiner asserts that the opening 20 of FIG. 3 creates a surface finish rougher than the surface finish of an exterior surface.

Applicants respectfully note that a surface finish applies to the finish or texture of a surface. That is, the finish or texture of the surface may be, for example, wavy or have repetitive or random surface deviations from a determined normal surface. The term "surface finish", and the measurement thereof, as known in the industry, do not relate to large openings formed in a surface. Accordingly, Applicants respectfully submit that the openings 20 formed in the stent of Brown cannot be properly characterized as providing a particular finish of a surface, as defined by industry definitions.

The openings 20 of Brown provide a void in the surface, not a texture in the surface. The surface of the stent 10 that surrounds the openings 20, however, does have a particular surface finish or texture. Yet, Brown does not disclose that the surface surrounding the openings 20 is a rough surface finish, as characterized by claims 1 and 29. Applicants therefore respectfully submit that independent claims 1 and 29, and dependent claims 2, 3, and 33-36 are patentable.

B. Claims 8-12, 19, 21-23, and 38-44

Independent claims 8 and 9 each recite a stent having an interior surface including at least a portion having a rough surface finish. For similar reasons as discussed with regards to claim 1, Applicants respectfully submit that independent claims 8 and 9, and dependent claims 10-12, 19, 21-23, and 38-44 are patentable.

III. Alt (U.S. Patent 6,217,607 B1)

The Examiner rejected claims 8-9, 11-12, 19, 21-22, 29, 33-34 and 36-44 under 35 U.S.C. §102(e) as being anticipated by Alt (U.S. Patent 6,217,607 B1). Applicants respectfully traverse this rejection, but have amended claims 8, 9, and 41, and cancelled claim 40 to advance this application to allowance. Applicants reserve the right to pursue the original subject matter via a continuing application.

Alt discloses a stent 10 having three primary layers. The outermost layer 80 is deposited as an inert coating over an underlying intermediate layer. Column 7, lines 45-55. A sputtering process may be used to form this outermost coating; in addition to oxidation, sintering, or electrodeposition process can be used. Columns 7-8, lines 65-2.

A. Claims 8, 9, 11, 12, 19, 21, 22, 38, 39 and 41-44

Independent claims 8 and 9 each recite a stent having a stent body. The stent body includes an interior surface having a rough surface finish, wherein the rough surface finish includes portions removed from a base material of the stent body.

Alt does not disclose a stent having a rough surface finish, the rough surface finish including portions removed from a base material. Rather, Alt discloses a stent 10 including an outer layer that is deposited onto an intermediate or base layer. For example, Alt teaches that the stent is made of an iridium oxide layer formed on a base metal of the stent. The "relatively rough outer surface on the firmly bonded iridium oxide layer" provides indentations. Column 9, lines 40-47.

At least because Alt does not disclose a stent having a rough surface finish including portions removed from a base material, Applicants respectfully submit that independent claim 8, independent claim 9, and dependent claims 11, 12, 19, 21, 22, 38, 39 and 41-44 are patentable.

B. Claims 29, 33, 34, 36, and 37

Claim 29 recites a stent having a stent body. The stent body includes an interior surface having a rough surface finish rougher than a surface finish of an exterior surface.

Alt does not disclose a stent including an interior surface having a rough surface finish that is rougher than a surface finish of an exterior surface. At least for this reasons, Applicants respectfully submit that independent claim 29, and dependent claims 33, 34, 36, and 37 are patentable.

### SUMMARY

It is respectfully submitted that each of the presently pending claims (claims 1-3, 8-12, 19-23, 29, 31-39, and 41-45) is in condition for allowance and notification to that effect is requested. The Examiner is invited to contact Applicants' representative at the below-listed telephone number if it is believed that prosecution of this application may be assisted thereby.

Although certain arguments regarding patentability are set forth herein, there may be other arguments and reasons why the claimed invention is patentably distinct. Applicants reserve the right to raise these arguments in the future.

Respectfully submitted,



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